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IN THE

Supreme Court of the United States

November Term, 1963

No. 562

MILTON E. SPATT,

Appellant,

v.

THE CITY OF NEW YORK, LAWRENCE E. GEROSA, as Comptroller of the City of New York, HILDA G. SCHWARTZ, as Treasurer of the City of New York and WILLIAM LEFKOWITZ, as Warrant Agent of the City of New York,

Appellees.

On Appeal from the Court of Appeals of the State of New York

APPELLEES' REPLY ON MOTION TO DISMISS APPEAL

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STANLEY BUCHSBAUM,
SOLOMON PORTNOW,
of Counsel.

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(1)

The appellant, in his brief opposing the motion to dismiss the appeal, raises a new argument in support of his contention that he has been denied the equal protection of the laws. He asserts that the City's admission that the decision in *Halliburton Oil Well Cementing Company* v. *Reily*, 373 U. S. 64 (1963), bars the imposition of the use

tax without deducting the credit for the traded-in article when the purchase is made in another state furnishes an additional ground for his contention that he has been denied equal protection. He states that there is no reasonable basis for distinguishing between a purchase made in another state and a purchase made in the State of New York outside the City of New York.

The appellant either overlooks or disregards the fact that the local tax law applies alike to all motor vehicles used by a resident in the City of New York after purchase outside the City except to the extent that this Court's ruling has required a limitation based on the Commerce Clause with regard to vehicles purchased in another state.

On several occasions this Court has rejected equal protection arguments based on discrimination resulting from Commerce Clause or other constitutional restrictions on the right to tax persons situated similarly to those upon whom the tax is imposed. *Packer Corporation* v. *Utah*, 285 U. S. 105, 109-110 (1932); *Union Bank & Trust Co.* v. *Phelps*, 288 U. S. 181, 186-187 (1933).

In *Raley & Bros.* v. *Richardson*, 264 U. S. 157 (1924) this Court said (pp. 159-160):

> "There is nothing in the contention that, because, under the construction placed upon the statute by the state courts, the tax falls upon those engaged in domestic business and does not fall upon those engaged in interstate business, it is void for inequality. It would be a strange application of the equality provision of the Fourteenth Amendment to say that because a State is forbidden by paramount law to impose a tax upon

some merchants, it is therefore powerless to impose it upon other merchants to whom the restriction does not apply. It is enough if the State observe the rule of equality among the persons subject to its taxing power."

Conclusion

The appeal to this Court from the judgment of the Court of Appeals of the State of New York should be dismissed.

November 21, 1963.

Respectfully submitted,

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